

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

FRANCIS HOWLAN,

Index No.

Plaintiff,

v.

THE ROMAN CATHOLIC DIOCESE OF ALBANY, NEW YORK;
SAINT MARY'S CHURCH OF AMSTERDAM; SAINT MARY'S
INSTITUTE ELEMENTARY SCHOOL; and BISHOP SCULLY HIGH
SCHOOL,

SUMMONS

Date Index No. Purchased:
November 13, 2019

Defendants.

[Please see attached Rider for Defendants' Addresses]

To the above named Defendant(s)



You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

The basis of venue is one or more Defendant resides in Albany County, which is located in Albany County, New York.

Dated: New York, New York
November 13, 2019

SIMMONS HANLY CONROY LLC

Paul J. Hanly, Jr.
Attorneys for Plaintiff
112 Madison Avenue, 7th Floor
New York, NY 10016
(212) 784-6401 Telephone
(212) 213-5949 Facsimile
phanly@simmonsfirm.com

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY**

FRANCIS HOWLAN,

Index No.

Plaintiff,

v.

THE ROMAN CATHOLIC DIOCESE OF ALBANY, NEW YORK; SAINT MARY'S CHURCH OF AMSTERDAM; SAINT MARY'S INSTITUTE ELEMENTARY SCHOOL; and BISHOP SCULLY HIGH SCHOOL,

RIDER TO SUMMONS*Defendants.*

Defendant/Counsel	Service Address
THE ROMAN CATHOLIC DIOCESE OF ALBANY, NEW YORK	40 North Main Avenue, Albany, Albany County, New York
SAINT MARY'S CHURCH OF AMSTERDAM	156 East Main Street, Amsterdam, Montgomery County, New York
SAINT MARY'S INSTITUTE ELEMENTARY SCHOOL	10 Kopernik Drive, Amsterdam, Montgomery County, New York
BISHOP SCULLY HIGH SCHOOL	40 North Main Avenue, Albany, Albany County, New York

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY**

FRANCIS HOWLAN,

Index No.

Plaintiff,

v.

THE ROMAN CATHOLIC DIOCESE OF ALBANY, NEW YORK; SAINT MARY'S CHURCH OF AMSTERDAM; SAINT MARY'S INSTITUTE ELEMENTARY SCHOOL; and BISHOP SCULLY HIGH SCHOOL,

COMPLAINT

Defendants.

JURY TRIAL DEMANDED

Plaintiff Francis Howlan, by his attorneys Simmons Hanly Conroy LLC and the Law Offices of Mitchell Garabedian, brings this action against The Roman Catholic Diocese of Albany, New York; Saint Mary's Church of Amsterdam; Saint Mary's Institute Elementary School; and Bishop Scully High School, and alleges, on personal knowledge as to himself and on information and belief as to all other matters, as follows:

JURISDICTION AND VENUE

1. This Court has personal jurisdiction over the Defendants pursuant to CPLR 301 and 302, in that the Defendants reside in New York.

2. This Court has jurisdiction over this action because the amount of damages Plaintiff seeks exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

3. Venue for this action is proper in the County of Albany pursuant to CPLR 503 in that one or more of the Defendants reside in this County and a substantial part of the events or omissions giving rise to the claims asserted herein occurred in this County.

PARTIES

4. Plaintiff Francis Howlan ("Plaintiff") is an individual residing in Broadalbin, Fulton County, New York.

5. Defendant The Roman Catholic Diocese of Albany, New York ("Diocese of Albany") is a religious corporation incorporated by a special act of the Legislature of the State of New York on April 12, 1941, with its principal office at 40 North Main Avenue, Albany, Albany County, New York. The Diocese of Albany is a Roman Catholic diocese. At all relevant times, the Diocese of Albany created, oversaw, supervised, managed, controlled, directed and operated parishes, churches, and/or schools of the Diocese of Albany, including during all relevant times, Saint Mary's Church of Amsterdam; Saint Mary's Institute Elementary School; and Bishop Scully High School.

6. Defendant Saint Mary's Church of Amsterdam ("St. Mary's Church") is a Roman Catholic parish within and under the authority of the Diocese of Albany and is a New York domestic not-for-profit corporation with its principal office at 156 East Main Street, Amsterdam, Montgomery County, New York. At all relevant times, the Diocese of Albany created, oversaw, supervised, managed, controlled, directed and operated St. Mary's Church.

7. Defendant Saint Mary's Institute Elementary School ("St. Mary's Institute") is a Roman Catholic elementary school within and under the authority of the Diocese of Albany with its principal office at 10 Kopernik Drive, Amsterdam, Montgomery County, New York. At all relevant times, St. Mary's Institute was operated by Defendants Diocese of Albany and St. Mary's Church.

8. Defendant Bishop Scully High School ("Bishop Scully") was a Roman Catholic high school within and under the authority of the Diocese of Albany with its principal office formerly on Upper Church Street, Amsterdam, Montgomery County, New York, and now at 40 North Main Avenue, Albany, Albany County, New York. At all relevant times, Bishop Scully was operated by Defendant Diocese of Albany.

FACTS COMMON TO ALL CLAIMS

9. Plaintiff and his family were parishioners of and attended St. Mary's Church when Plaintiff was a minor child. From approximately 1961 to approximately

1969, when Plaintiff was approximately six to approximately fourteen years of age, Plaintiff attended St. Mary's Institute, the parochial elementary school affiliated with St. Mary's Church. From approximately 1969 to approximately 1973, when Plaintiff was approximately fourteen to approximately eighteen years of age, Plaintiff attended Bishop Scully. Plaintiff's father also worked at Bishop Scully when Plaintiff was a minor child.

Abuse Committed by Father James E. Hartley

10. During the times relevant to the allegations set forth herein, Father James E. Hartley ("Father Hartley") was assigned by Defendant Diocese of Albany to a priest at St. Mary's Church, where Plaintiff's family were parishioners. During the times relevant to the allegations set forth herein, Father Hartley was also assigned by Defendants Diocese of Albany and St. Mary's Church to be the principal at St. Mary's Institute, where Plaintiff was a student. Father Hartley is last known to have served at Catholic Central High School in Troy, Rensselaer County, New York in approximately 1975.

11. Through his positions at, within, or for Defendants Diocese of Albany, St. Mary's Church, and St. Mary's Institute, Father Hartley was put in direct contact with members of the Plaintiff's family, including Plaintiff, a minor parishioner of the Diocese of Albany.

12. During school hours on a day in approximately 1966 when Plaintiff was approximately eleven years of age, Father Hartley brought Plaintiff to a room in St. Mary's Institute to discipline Plaintiff.

13. Father Hartley used this encounter, gained through his positions at St. Mary's Church and St. Mary's Institute which granted him access to Plaintiff when Plaintiff was approximately eleven years of age, to sexually assault, sexually abuse, and/or have sexual contact with the Plaintiff in violation of the laws of the State of New York.

Abuse Committed by Father Donald F. Kelly

14. During the times relevant to the allegations set forth herein, Father Donald

F. Kelly ("Father Kelly") was assigned by Defendant Diocese of Albany to a priest at St. Mary's Church, where Plaintiff's family were parishioners. During the times relevant to the allegations set forth herein, Father Kelly was also assigned by Defendants Diocese of Albany and St. Mary's Church to be the principal at St. Mary's Institute, where Plaintiff was a student. Father Kelly died in 2015.

15. Through his positions at, within, or for Defendants Diocese of Albany, St. Mary's Church, and St. Mary's Institute, Father Kelly was put in direct contact with members of the Plaintiff's family, including Plaintiff, a minor parishioner of the Diocese of Albany.

16. From approximately 1968 when Plaintiff was approximately thirteen years of age, to approximately 1969 when Plaintiff was approximately fourteen years of age, Father Kelly would bring Plaintiff to a room in St. Mary's Institute during school hours to discipline Plaintiff.

17. Father Kelly used such encounters, gained through his positions at St. Mary's Church and St. Mary's Institute which granted him access to Plaintiff when Plaintiff was approximately thirteen to approximately fourteen years of age, to sexually assault, sexually abuse, and/or have sexual contact with the Plaintiff on at least fifteen occasions in violation of the laws of the State of New York.

Abuse Committed by Father David G. Bentley

18. During the times relevant to the allegations set forth herein, Father David G. Bentley ("Father Bentley"), then known as Mr. David G. Bentley, was assigned by Defendant Diocese of Albany to be a teacher at Bishop Scully, where Plaintiff was a student. Father Bentley was Plaintiff's biology teacher from approximately 1969 to approximately 1970, when Plaintiff was approximately fourteen to approximately fifteen years of age. Father Bentley is last known to have served at the Office of Administrative Advocate for the Diocese of Albany in approximately 2004, and was apparently removed from ministry in approximately 2002.

19. Through his positions at, within, or for Defendants Diocese of Albany and Bishop Scully, Father Bentley was put in direct contact with Plaintiff, a minor parishioner and student of the Diocese of Albany.

20. On at least three occasions from approximately 1969 to approximately 1970, when Plaintiff was approximately fourteen to approximately fifteen years of age, Father Bentley invited Plaintiff to stay overnight at Father Bentley's home in Albany, Albany County, New York.

21. Father Bentley used such encounters, gained through his position at Bishop Scully which granted him access to Plaintiff when Plaintiff was approximately fourteen to approximately fifteen years of age, to sexually assault, sexually abuse, and/or have sexual contact with the Plaintiff on at least three occasions in violation of the laws of the State of New York.

Defendants' Responsibility for the Abuse Committed by Father Hartley, Father Kelly, and Father Bentley

22. At all times material hereto, Father Hartley and Father Kelly were under the management, supervision, employ, direction and/or control of Defendants Diocese of Albany, St. Mary's Church, and St. Mary's Institute.

23. At all times material hereto, Father Bentley was under the management, supervision, employ, direction, and/or control of Defendants Diocese of Albany and Bishop Scully.

24. Through Father Hartley's and Father Kelly's positions at, within, or for Defendants Diocese of Albany, St. Mary's Church, and St. Mary's Institute, Father Hartley and Father Kelly were put in direct contact with Plaintiff.

25. Through Father Bentley's position at, within, or for Defendants Diocese of Albany and Bishop Scully, Father Bentley was put in direct contact with Plaintiff.

26. Father Hartley and Father Kelly used their positions at, within, or for Defendants Diocese of Albany, St. Mary's Church, and St. Mary's Institute, and the

implicit representations made by them about their characters that accompanied those positions, to gain Plaintiff's trust and confidence and to create an opportunity to be alone with, and to sexually touch, Plaintiff.

27. Father Bentley used his position at, within, or for Defendants Diocese of Albany and Bishop Scully, and the implicit representations made by them about his character that accompanied that positions, to gain Plaintiff's trust and confidence and to create an opportunity to be alone with, and to sexually touch, Plaintiff.

28. Defendants Diocese of Albany, St. Mary's Church, and St. Mary's Institute had the duty to reasonably manage, supervise, control and/or direct priests who served at St. Mary's Church and St. Mary's Institute, and specifically, had a duty not to aid pedophiles such as Father Hartley and Father Kelly by assigning, maintaining, and/or appointing them to positions with access to minors.

29. Defendants Diocese of Albany and Bishop Scully had the duty to reasonably manage, supervise, control and/or direct teachers who served at Bishop Scully, and specifically, had a duty not to aid pedophiles such as Father Bentley by assigning, maintaining, and/or appointing them to positions with access to minors.

30. Defendants Diocese of Albany, St. Mary's Church, and St. Mary's Institute knew and/or reasonably should have known, and/or knowingly condoned, and/or covered up, the inappropriate and unlawful sexual activities of Father Hartley and Father Kelly, who sexually abused Plaintiff.

31. Defendants Diocese of Albany and Bishop Scully knew and/or reasonably should have known, and/or knowingly condoned, and/or covered up, the inappropriate and unlawful sexual activities of Father Bentley, who sexually abused Plaintiff

32. Defendant Diocese of Albany had a duty to the Plaintiff to properly supervise Diocese of Albany priests and teachers, to ensure that they did not use their positions with the Diocese of Albany as a tool for grooming and assaulting vulnerable children. Defendant Diocese of Albany knew or should have known that Father Hartley,

Father Kelly, and Father Bentley used their positions with the Diocese of Albany to sexually abuse minor children, including the Plaintiff.

Consequences of the Abuse

33. Plaintiff suffered personal physical and psychological injuries and damages as a result of Father Hartley's, Father Kelly's, and Father Bentley's actions, as well as other damages related thereto, as a result of the childhood sexual abuse Plaintiff sustained.

34. As a direct result of the Defendants Diocese of Albany's, St. Mary's Church's, St. Mary's Institute's, and Bishop Scully's conduct described herein, Plaintiff suffered and will continue to suffer great pain of mind and body, severe and permanent emotional distress, and physical manifestations of emotional distress. Plaintiff was prevented from obtaining the full enjoyment of life; has incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling; and has incurred and will continue to incur loss of income and/or loss of earning capacity. As a victim of Father Hartley's, Father Kelly's, and Father Bentley's sexual abuse, Plaintiff is unable at this time to fully describe all of the details of that abuse and the extent of the harm he suffered as a result.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

Negligent Hiring/Retention/Supervision/Direction

35. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 34 as if fully set forth herein.

36. Defendants Diocese of Albany, St. Mary's Church, and St. Mary's Institute owed a duty of care to all minor persons, including Plaintiff, who were likely to come within the influence or supervision of Father Hartley and Father Kelly in their roles as priest, principal, teacher, counselor, trustee, director, officer, employee, agent, servant and/or volunteer, to insure that Father Hartley and Father Kelly did not use their

assigned position to injure minors by sexual assault, sexual abuse, or sexual contact in violation of the laws of the State of New York.

37. Defendants Diocese of Albany and Bishop Scully owed a duty of care to all minor persons, including Plaintiff, who were likely to come within the influence or supervision of Father Bentley in his role as priest, teacher, counselor, trustee, director, officer, employee, agent, servant and/or volunteer, to insure that Father Bentley did not use his assigned position to injure minors by sexual assault, sexual abuse, or sexual contact in violation of the laws of the State of New York

38. Defendant Diocese of Albany at all relevant times represented that the parishes and schools of the Diocese of Albany were safe places for minors to attend, and that its priests and teachers were individuals to whom it was safe to entrust the care of minor children. Defendant Diocese of Albany entered into an express and/or implied duty to safely treat Plaintiff and assumed the duty to protect and care for him.

39. Father Hartley and Father Kelly sexually assaulted, sexually abused, and/or had sexual contact with Plaintiff when Plaintiff was a minor at St. Mary's Institute.

40. Father Bentley sexually assaulted, sexually abused, and/or had sexual contact with Plaintiff when Plaintiff was a minor at Father Bentley's home in Albany, Albany County, New York.

41. Defendants Diocese of Albany, St. Mary's Church, and St. Mary's Institute negligently hired, retained, directed, and supervised Father Hartley and Father Kelly, though they knew or should have known that Father Hartley and Father Kelly posed a threat of sexual abuse to minors.

42. Defendants Diocese of Albany and Bishop Scully negligently hired, retained, directed, and supervised Father Bentley, though they knew or should have known that Father Bentley posed a threat of sexual abuse to minors.

43. Defendants Diocese of Albany, St. Mary's Church, and St. Mary's Institute

knew or should have known of Father Hartley's and Father Kelly's propensity for the conduct which caused Plaintiff's injuries prior to, or at the time of, the injuries' occurrence.

44. Defendants Diocese of Albany and Bishop Scully knew or should have known of Father Bentley's propensity for the conduct which caused Plaintiff's injuries prior to, or at the time of, the injuries' occurrence.

45. Defendants Diocese of Albany, St. Mary's Church, and St. Mary's Institute were negligent in failing to properly supervise Father Hartley and Father Kelly.

46. Defendants Diocese of Albany and Bishop Scully were negligent in failing to properly supervise Father Bentley.

47. The sexual abuse of children by adults, including priests, is a foreseeable result of negligence.

48. At all times material hereto, Defendants Diocese of Albany's, St. Mary's Church's, St. Mary's Institute's, and Bishop Scully's actions were willful, wanton, malicious, reckless, negligent and/or outrageous in their disregard for the rights and safety of Plaintiff.

49. As a direct and proximate result, Plaintiff has suffered and will continue to suffer the injuries described herein.

50. By reason of the foregoing, the Defendants are liable to the Plaintiff, jointly, severally and/or in the alternative liable to the Plaintiff for compensatory damages and for punitive damages, together with interest and costs.

SECOND CAUSE OF ACTION

Negligence/Gross Negligence

51. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 34 as if fully set forth herein.

52. Defendants Diocese of Albany, St. Mary's Church, and St. Mary's Institute knew, or were negligent in not knowing, that Father Hartley and Father Kelly posed a

threat of sexual abuse to children.

53. Defendants Diocese of Albany and Bishop Scully knew, or were negligent in not knowing, that Father Bentley posed a threat of sexual abuse to children.

54. The acts of Father Hartley and Father Kelly described hereinabove were undertaken, and/or enabled by, and/or during the course, and/or within the scope of their respective employment, appointment, assignment, and/or agency with Defendants Diocese of Albany, St. Mary's Church, and St. Mary's Institute.

55. The acts of Father Bentley described hereinabove were undertaken, and/or enabled by, and/or during the course, and/or within the scope of his respective employment, appointment, assignment, and/or agency with Defendants Diocese of Albany and Bishop Scully.

56. Defendants Diocese of Albany, St. Mary's Church, and St. Mary's Institute owed Plaintiff, a minor at the relevant times of abuse, a duty to protect him from Father Hartley's and Father Kelly's sexual deviancy and the consequential damages, both prior to and/or subsequent to Father Hartley's and Father Kelly's misconduct.

57. Defendants Diocese of Albany and Bishop Scully owed Plaintiff, a minor at the relevant times of abuse, a duty to protect him from Father Bentley's sexual deviancy and the consequential damages, both prior to and/or subsequent to Father Bentley's misconduct

58. Defendants Diocese of Albany's, St. Mary's Church's, St. Mary's Institute's, and Bishop Scully's willful, wanton, grossly negligent and/or negligent act(s) of commission and/or omission, resulted directly and/or proximately in the damage set forth herein at length.

59. Defendants Diocese of Albany, St. Mary's Church, and St. Mary's Institute:

- a. gave improper or ambiguous orders or failed to make proper regulations, and/or employed improper persons or instrumentalities in work involving risk of harm to others;

- b. failed adequately to supervise the activities of Father Hartley and Father Kelly;
 - c. permitted, and/or intentionally failed and/or neglected to prevent, negligent and/or grossly negligent conduct and/or allowed other tortious conduct by persons, whether or not their servants and/or agents and/or employees, upon premises or with instrumentalities under their control; and
 - d. allowed the acts of omission and/or commission and/or any or all of the allegations set forth in this Complaint to occur.
60. Defendants Diocese of Albany and Bishop Scully:
- a. gave improper or ambiguous orders or failed to make proper regulations, and/or employed improper persons or instrumentalities in work involving risk of harm to others;
 - b. failed adequately to supervise the activities of Father Bentley;
 - c. permitted, and/or intentionally failed and/or neglected to prevent, negligent and/or grossly negligent conduct and/or allowed other tortious conduct by persons, whether or not their servants and/or agents and/or employees, upon premises or with instrumentalities under their control; and
 - d. allowed the acts of omission and/or commission and/or any or all of the allegations set forth in this Complaint to occur.
61. At all times material hereto, with regard to the allegations contained herein, Father Hartley and Father Kelly were under the supervision, employ, direction and/or control of Defendants Diocese of Albany, St. Mary's Church, and St. Mary's Institute.
62. At all times material hereto, with regard to the allegations contained herein, Father Bentley was under the supervision, employ, direction and/or control of

Defendants Diocese of Albany and Bishop Scully.

63. At all times material hereto, Defendants Diocese of Albany's, St. Mary's Church's, St. Mary's Institute's, and Bishop Scully's actions were willful, wanton, malicious, reckless, negligent and outrageous in their disregard for the rights and safety of Plaintiff, which amounted to conduct equivalent to criminality.

64. As a direct and/or indirect result of said conduct, Plaintiff has suffered and will continue to suffer the injuries and damages described herein.

65. By reason of the foregoing, the Defendants are liable to the Plaintiff, jointly, severally and/or in the alternative liable to the Plaintiff for compensatory damages and for punitive damages, together with interest and costs.

THIRD CAUSE OF ACTION

Breach of Non-Delegable Duty

66. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 34 as if fully set forth herein.

67. Plaintiff, when he was a minor, was placed in the care and supervision of the Defendants Diocese of Albany, St. Mary's Church, St. Mary's Institute, and Bishop Scully for the purposes of, *inter alia*, providing Plaintiff with a safe environment in which to participate in religious, educational, youth and recreational activities. There existed a non-delegable duty of trust between Plaintiff and the Defendants.

68. Plaintiff was a vulnerable child when placed within the care of Defendants Diocese of Albany, St. Mary's Church, St. Mary's Institute, and Bishop Scully.

69. As a consequence, Defendants Diocese of Albany, St. Mary's Church, and St. Mary's Institute were in the best position to prevent Plaintiff's abuse by Father Hartley and Father Kelly, to learn of Father Hartley's sexual abuse of Plaintiff and Father Kelly's repeated sexual abuse of Plaintiff, and to stop it. Defendants Diocese of Albany and Bishop Scully were in the best position to prevent Plaintiff's abuse by Father Bentley, to learn of Father Bentley's repeated sexual abuse of Plaintiff, and to stop it.

70. By virtue of the fact that Plaintiff was sexually abused as a minor child entrusted to the care of the Defendants Diocese of Albany, St. Mary's Church, St. Mary's Institute, and Bishop Scully, Defendants Diocese of Albany, St. Mary's Church, St. Mary's Institute, and Bishop Scully breached their non-delegable duty to Plaintiff.

71. At all times material hereto Father Hartley and Father Kelly were under the supervision, employ, direction and/or control of the Defendants Diocese of Albany, St. Mary's Church, and St. Mary's Institute.

72. At all times material hereto Father Bentley was under the supervision, employ, direction and/or control of the Defendants Diocese of Albany and Bishop Scully.

73. As a direct result of said conduct, Plaintiff has suffered and will continue to suffer the injuries and damages described herein.

74. By reason of the foregoing, the Defendants are liable to the Plaintiff, jointly, severally and/or in the alternative liable to the Plaintiff for compensatory damages and for punitive damages, together with interest and costs.

FOURTH CAUSE OF ACTION

Breach of Fiduciary Duty

75. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 34 as if fully set forth herein.

76. There exists a fiduciary relationship of trust, confidence, and reliance between Plaintiff and Defendants Diocese of Albany, St. Mary's Church, St. Mary's Institute, and Bishop Scully. This relationship is based on the entrustment of the Plaintiff while he was a minor child to the care and supervision of the agent or servant of the Defendants Diocese of Albany, St. Mary's Church, St. Mary's Institute, and Bishop Scully. This entrustment of the Plaintiff to the care and supervision of the Defendants Diocese of Albany, St. Mary's Church, St. Mary's Institute, and Bishop Scully, while the Plaintiff was a minor child, required the Defendants Diocese of Albany, St. Mary's Church, St. Mary's Institute, and Bishop Scully to assume a fiduciary relationship and to act in the best

interests of the Plaintiff, as well as to protect him while he was a minor and vulnerable child.

77. Pursuant to their fiduciary relationship, Defendants Diocese of Albany, St. Mary's Church, St. Mary's Institute, and Bishop Scully were entrusted with the well-being, care, and safety of Plaintiff.

78. Pursuant to their fiduciary relationship, Defendants Diocese of Albany, St. Mary's Church, St. Mary's Institute, and Bishop Scully assumed a duty to act in the best interests of Plaintiff.

79. Defendants Diocese of Albany, St. Mary's Church, St. Mary's Institute, and Bishop Scully breached their fiduciary duty to Plaintiff.

80. At all times material hereto, the actions and/or inactions of Defendants Diocese of Albany, St. Mary's Church, St. Mary's Institute, and Bishop Scully were willful, wanton, malicious, reckless, negligent and outrageous in their disregard for the rights and safety of Plaintiff.

81. As a direct result of said conduct, Plaintiff has suffered and will continue to suffer the injuries and damages described herein.

82. By reason of the foregoing, the Defendants are liable to the Plaintiff, jointly, severally and/or in the alternative liable to the Plaintiff for compensatory damages and for punitive damages, together with interest and costs.

FIFTH CAUSE OF ACTION

Negligent Infliction of Emotional Distress

83. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 34 as if fully set forth herein.

84. As described above, the actions of Defendants Diocese of Albany, St. Mary's Church, St. Mary's Institute, and Bishop Scully, their agents, servants, and/or employees were conducted in a negligent and/or grossly negligent manner.

85. Defendants Diocese of Albany's, St. Mary's Church's, St. Mary's Institute's,

and Bishop Scully's actions endangered Plaintiff's safety and caused him to fear for his own safety.

86. As a direct and proximate result of Defendants Diocese of Albany's, St. Mary's Church's, St. Mary's Institute's, and Bishop Scully's actions, which included but were not limited to negligent and/or grossly negligent conduct, Plaintiff suffered and will continue to suffer the severe injuries and damages described herein, including but not limited to, mental and emotional distress.

87. By reason of the foregoing, the Defendants are liable to the Plaintiff, jointly, severally and/or in the alternative liable to the Plaintiff for compensatory damages and for punitive damages, together with interest and costs.

SIXTH CAUSE OF ACTION

Breach of Duty *in Loco Parentis*

88. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 34 as if fully set forth herein.

89. While he was a minor, Plaintiff was entrusted by his parents to the control of the Defendants Diocese of Albany, St. Mary's Church, and St. Mary's Institute, as well as directly to Father Hartley and Father Kelly, agents or servants of Defendants Diocese of Albany, St. Mary's Church, and St. Mary's Institute, for the purposes of *inter alia*, providing Plaintiff with appropriate guidance and an opportunity to enjoy educational and youth activities under responsible adult supervision. Defendants Diocese of Albany, St. Mary's Church, and St. Mary's Institute owe — and owed — a duty to children entrusted to them to act *in loco parentis* and to prevent foreseeable injuries.

90. While he was a minor, Plaintiff was entrusted by his parents to the control of the Defendants Diocese of Albany and Bishop Scully, as well as directly to Father Bentley, an agent or servant of Defendants Diocese of Albany and Bishop Scully, for the purposes of *inter alia*, providing Plaintiff with appropriate guidance and an opportunity to enjoy educational and youth activities under responsible adult supervision.

Defendants Diocese of Albany and Bishop Scully owe — and owed — a duty to children entrusted to them to act *in loco parentis* and to prevent foreseeable injuries

91. Defendants Diocese of Albany, St. Mary's Church, St. Mary's Institute, and Bishop Scully breached their duty to act *in loco parentis*.

92. At all times material hereto, Defendants Diocese of Albany's, St. Mary's Church's, St. Mary's Institute's, and Bishop Scully's actions were willful, wanton, malicious, reckless, negligent, grossly negligent and/or outrageous in their disregard for the rights and safety of Plaintiff.

93. As a direct result of Defendants Diocese of Albany's, St. Mary's Church's, St. Mary's Institute's, and Bishop Scully's conduct, Plaintiff has suffered and will continue to suffer the injuries and damages described herein.

94. By reason of the foregoing, the Defendants are liable to the Plaintiff, jointly, severally and/or in the alternative liable to the Plaintiff for compensatory damages and for punitive damages, together with interest and costs.

WHEREFORE Plaintiff, demands judgment against the Defendants on each cause of action as follows:

- A. Awarding compensatory damages in an amount to be proved at trial, but in any event in an amount that exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction;
- B. Awarding punitive damages to the extent permitted by law;
- C. Awarding prejudgment interest to the extent permitted by law;
- D. Awarding costs and fees of this action, including attorneys' fees, to the extent permitted by law; and
- E. Awarding such other and further relief as to this Court may seem just and proper.

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable.

Dated: November 13, 2019
New York, New York

Respectfully Submitted,

/s/ Paul J. Hanly, Jr.
Paul J. Hanly, Jr.
phanly@simmonsfirm.com
Jayne Conroy
jconroy@simmonsfirm.com
Andrea Bierstein
abierstein@simmonsfirm.com
SIMMONS HANLY CONROY LLC
112 Madison Avenue
New York, NY 10016
(212) 784-6401 Telephone
(212) 213-5949 Facsimile

Attorneys for Plaintiff

Of counsel:

Mitchell Garabedian
mgarabedian@garabedianlaw.com
William H. Gordon
wgordon@garabedianlaw.com
LAW OFFICES OF MITCHELL GARABEDIAN
100 State Street, 6th Floor
Boston, MA 02109
Phone: (617) 523-6250